

E-filed: October 10, 2023

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

CASH CLOUD, INC., dba COIN CLOUD,

Debtor.

Case No. 23-10423-mkn

Chapter 11

**GENESIS GLOBAL HOLDCO, LLC'S
PRE-TRIAL BRIEF**

Trial Date: October 16-17, 2023

Hearing Time: 9:30 a.m.

Genesis Global Holdco, LLC ("Genesis"), by and through its undersigned counsel, submits the following pre-trial brief (this "Brief") in advance of the trial on October 16 and 17, 2023 at 9:30 a.m. regarding, in relevant part, Debtor's *Motion for Entry of an Order Authorizing Debtor to*

1 *Surcharge the Collateral of Genesis Global Holdco, LLC, Enigma Securities Limited, and AVT*
 2 *Nevada, L.P.* [ECF No. 926] (“Surcharge Motion”).

3 I. INTRODUCTION

4 Genesis files this Brief to address certain developments in connection with the Surcharge
 5 Motion that occurred after Genesis filed its *Objection to Motion for Entry of an Order Authorizing*
 6 *Debtor to Surcharge the Collateral of Genesis Global Holdco, LLC, Enigma Securities Limited,*
 7 *and AVT Nevada, L.P.* [ECF No. 1160] (the “Objection”).¹ At the time Genesis filed its Objection,
 8 Debtor had submitted only one declaration, the *Declaration of Tanner James in Support of Motion*
 9 *for Entry of an Order Authorizing Debtor to Surcharge the Collateral of Genesis Global Holdco,*
 10 *LLC, Enigma Securities Limited, and AVT Nevada, L.P.* (the “Initial Surcharge Declaration”) [ECF
 11 No. 927], and Genesis had taken the deposition of Tanner James on August 22, 2023 (the “Initial
 12 Surcharge Deposition”). Since then, Debtor filed three supplemental declarations on behalf of Mr.
 13 James [ECF Nos. 1244, 1281, 1307] (collectively, the “Supplemental Surcharge Declarations”),
 14 and Genesis took the second deposition of Mr. James on October 9, 2023 (the “Second Surcharge
 15 Deposition”), the draft transcript of which is attached as **Exhibit A**.

16 Despite Debtor’s desperate attempt to “fix” the record after the Secured Creditors filed their
 17 objections to the Surcharge Motion, nothing in the Supplemental Surcharge Declarations addresses
 18 the Surcharge Motion’s fatal flaw—that is, that Debtor has utterly failed to meet its burden to prove
 19 under applicable Ninth Circuit precedent that the fees and expenses that Debtor seeks to surcharge
 20 against Genesis were reasonable, necessary, and provided a quantifiable benefit to Genesis. Indeed,
 21 as described in greater detail below, the testimony by Mr. James at the Second Surcharge
 22 Deposition only underscores the fact that such an analysis was not performed. demonstrates. The
 23 Supplemental Surcharge Declarations similarly fall short of proving that Genesis somehow
 24 “consented” to the amount sought to be surcharged (as they must given that Genesis did not do so).
 25 For the reasons set forth below, as well as those set forth in the Objection, the Court should deny
 26 the Surcharge Motion in its entirety.

27
 28 _____
¹ Unless otherwise stated herein, capitalized terms shall have the meanings ascribed to them in the Objection.

II. ARGUMENT

Debtor has again failed to clear the high hurdle required to surcharge Genesis in any of the Supplemental Surcharge Declarations or through the testimony of Mr. James at the Second Surcharge Deposition, especially given the Ninth Circuit's narrow construction of § 506(c) in *In re Debbie Reynolds Hotel & Casino, Inc.*, 255 F.3d 1061 (9th Cir. 2001) ("*In re Debbie Reynolds*").²

1. Mr. James Failed to Conduct the Surcharge Analysis Pursuant to Ninth Circuit Law

In filing the Supplemental Surcharge Declarations, Debtor had three opportunities to correct the deficiencies in Mr. James's Surcharge Analysis under *In re Debbie Reynolds*. Each time, however, Mr. James failed to analyze each time entry to determine whether the professional services rendered provided a concrete and quantifiable benefit to a Secured Creditor. Instead, Mr. James examined only whether the services provided "were related to the sale process and the ... surcharge." See Ex. A at 12:1-6. Whether the services provided were merely "related to" the sale process is certainly not the correct standard. As such, Mr. James's analysis does not satisfy the requirements set forth by the Ninth Circuit in the *In re Debbie Reynolds* decision.

2. Debtor Has Provided No Evidence that, Prior to the Announcement of the Auction Results, It or the Committee Conducted the Sale Process Solely for the Benefit of the Secured Creditors

Despite having the burden of proof, Debtor failed to show that the expenses it seeks to surcharge were incurred "primarily for the benefit of the secured creditor" as opposed to the estate at large. *In re Cascade Hydraulics & Utility Serv., Inc.*, 815 F.2d 546, 548 (9th Cir. 1987); see also *C.I.T. Corp. v. A & A Printing, Inc.*, 70 B.R. 878, 880 (M.D. N.C. 1987) ("Section 506(c) is a narrow exception to the general rule that unsecured creditors bear the cost of bankruptcy administration, and . . . it does not permit recoupment of expenses which benefit the estate at large, but help secured creditors only indirectly."). Stated differently, a secured creditor cannot be surcharged if a debtor and its professionals incurred the expenses while working for the benefit of all creditors. Debtor has never provided evidence to show that, at any specific time prior to the

² The legal standard set forth in the Objection are incorporated by reference as though fully stated herein. See ECF No. 1160 at 12:13-13:25.

1 announcement of the Winning Bids, either it or the Committee realized that the unsecured creditors
 2 were out of the money, such that all actions thereafter might be taken entirely for the benefit of the
 3 Secured Creditors. Instead, Mr. James speculated that Debtor only determined that its efforts would
 4 solely benefit the Secured Creditors when the sale closed: “I guess you could say, you know, it’s
 5 over when it’s over, so maybe when the sale closed” Ex. A at 27:3-10.

6 III. CONCLUSION

7 Debtor has had ample opportunity to conduct the required analysis and to produce the
 8 evidence necessary to support the relief that it seeks in the Surcharge Motion. The record speaks
 9 for itself—Debtor has failed to meet its burden under the applicable law in the Ninth Circuit. Based
 10 on the foregoing, and for the reasons stated in the Objection, Genesis requests that the Court deny
 11 the Surcharge Motion in its entirety.

12 DATED this 10th day of October 2023.

13 SNELL & WILMER L.L.P.

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